IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Ghasi Lal & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.1085/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 3-8-2002 in Sessions Case No.48/2001 passed by Shri Ghanshyam Giri, RHJS, Additional Sessions Judge (Fast Track) Baran.

Date of Judgment: August 08, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Sunil Tyagi, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The appellants, four in number, along with one Akheraj were put to trial before learned Additional Sessions Judge (Fast Track) Baran, who vide judgment dated August 3, 2002 convicted and sentenced the appellants as under:-

Ghasi Lal, Ram Shyam, Ram Swaroop and Ram Singh:
U/s.302/149 IPC:
Each to suffer life imprisonment and fine of Rs.100/-, in default to further suffer rigorous imprisonment for one month.

U/s.323/149 IPC:
Each to suffer simple imprisonment for six months and fine of Rs.100/-, in default to further suffer simple imprisonment for fifteen days.

U/s.324/149 IPC:
Each to suffer simple imprisonment for one year and fine of

Rs.100/-, in default to further suffer simple imprisonment for fifteen days.

U/s.148 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs.100/-, in default to further suffer simple imprisonment for fifteen days.

Substantive sentences were ordered to run concurrently.

Since accused Akheraj died during trial the proceedings against him stood dropped.

2. It is the prosecution case that on September 13, 2000 informant Hari Ram (Pw.23) submitted a written report (Ex.P-34) at Police Station Sadar Baran to the effect that on the said day around 10 AM while his nephew Ramlal and other family members were sitting on the road and waiting for bus, Ghasi Lal, Ram Singh, Ram Swaroop, Ramshyam, Akheraj armed with gun and other weapons came over there in a tractor. No sooner did they reach Ram Singh opened fire that hit Roop Lal and he died instantly. Ram Singh opened another fire at Suraj Mal and others inflicted blows with Kuntia and Gandasis on the person of Roop Narayan, Sheo Karan and Roop Lal. The incident was seen by Harpal, Man Singh and other villagers. On that report a case under sections 147, 148, 149, 341, 307 and 302 IPC was registered and investigation commenced. Autopsy on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded, appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Baran. Charges under sections 148, 149, 302, 302/149, 307, 307/149, 323, 323/149, 324 and 324/149 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 23

witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. Two witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated above.

3. We have heard the submissions advanced before us and scanned the material on record.

4. Indisputably death of Roop Lal was homicidal in nature. A look at Post Mortem Report (Ex.P-12) reveals that following ante mortem injuries were found on the dead body:-

1. Lacerated circular wound 2½ x 2½ cm x 1cm (muscle deep) chest 5cm above & medial to Lt. arota.
2. Lacerated circular wound (wound of entry) 3½ x 3½ cm x chest deep over mid of chest of the lavel of nipple
3. Abrasion 2½ x 2½ cm Rt. upper chest 5cm above & lat. Rt. nipple.
4. Lacerated 2½ x 2½ x thoracic deep with everted margin at mid axillary line between 7-8 ribs

In the opinion of Dr. Shiv Ratan Kochar (Pw.22) the cause of death was rupture of heart by fire arm injuries.

5. Coming to the prosecution evidence we notice that Hari Ram (Pw.23), Bacchhi Bai (Pw.22), Suraj Mal (Pw.17) and Satya Narain (Pw.7) were examined as eye witnesses of the occurrence. In his deposition Hari Ram stated that on the date of incident around 9-10 AM while he was sitting outside the house of Roop Lal, a tractor came from the west side. Ghasi Lal and his sons viz. Ram Singh, Ram Swaroop, Ram Shyam and Akheraj were sitting on the tractor. The tractor got halted in front of the house of Roop Lal

and Ghasi Lal and his sons started hurling abuses. Suraj Mal then came out of Roop Lal's house and reached near the tractor. Ram Singh then opened fire that hit on the left elbow of Suraj Mal. Roop Lal thereafter came out of his house and asked Ram Singh not to use gun but Ram Singh opened two fires that hit in the chest and abdomen of Roop Lal, as a result of which he fell down. Brother and Mother of Roop Lal were also beaten up. Testimony of Hari Ram gets corroboration from the evidence of Bacchhi Bai, Suraj Mal and Satya Narain.

6. The question that arises for consideration is whether the appellants Ghasi Lal, Ram Shyam and Ram Swaroop could be held vicariously liable for the act of appellant Ram Singh.

7. Section 149 IPC requires primarily that a person should be a member of unlawful assembly, that in prosecution of the common object of that assembly, offence should be committed by a member of that unlawful assembly, and that the offence should be of such a nature that the members of the assembly knew the offence likely to be committed in prosecution of their common object. The true legal position in regard to the essential ingredients of an offence specified by Section 149 are not in doubt. Section 149 prescribed for vicarious or constructive criminal liability for all members of such an unlawful assembly where an offence is committed by any member of such unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object.

8. In order to attract the culpability under section 149 IPC, it has

to be borne in mind that Section 149 IPC does not create new offence but deals with vicarious liability of the members of the unlawful assembly for the acts done in prosecution of common object and for such offence as its members knew to be likely to be committed in prosecution of the common object. `Unlawful assembly' is defined in Section 141 IPC. In order that assembly can be designated as an unlawful assembly, it has to be shown that the assembly consisted of five or more persons, having one of the five specified objects as enumerated in the section itself as their `common object'. It must be proved that such objects were common to all the members of the assembly and the accused joined and continued as a member of the assembly. Section 141 IPC reads as under:-

> “Section 141. An assembly of five or more persons is designated an “Unlawful assembly”, if the common object of the persons composing that assembly is-
> First.- To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or
> Second.- To resist the execution of any law, or of any legal process; or
> Third.- To commit any mischief or criminal trespass, or other offence; or
> Fourth.- By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or
> Fifth. By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.
> Explanation.- an assembly, which was not unlawful when it assembled, may subsequently become an unlawful assembly.”

9. The common object of the unlawful assembly can be collected from the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. The common object is an inference of fact to be deduced from the facts and circumstances of the case.

10. Before analysing the testimony of prosecution witnesses, we deem it appropriate to refer to the defence version. Narottam Lal (Dw.1), who was driver on the tractor of appellant Ghasi Lal, deposed that while Ghasi Lal and Ram Singh were going in a tractor on the road, Roop Lal, Suraj Mal, Shiv Karan, Sattu and mother of Roop Lal got the tractor halted and gave beating to Ghasi Lal. Ghasi Lal (Dw.2) in his deposition stated that he along with his son Ram Singh was proceeding to Balaji temple on the tractor for organising `Ramayan Path', while they reached near the house of Roop Lal, they found Sheo Karan, Hari Ram, Rakesh, Man Singh, Harpal and Suraj Mal standing on the road. The tractor got halted by them and they gave beating to him. Injuries sustained by him got examined by the Medical Jurist. Injury report (Ex.D-4) reads as under:-

1. Lacerated 2½ x 1 x ½cm dorsum of right hand at base of Rt. proximal
2. Abrasion 7 x ½ posterior aspect of mid of Rt. forearm.
3. Abrasion 3 x 2cm Rt. elbow
4. Abrasion 6 x 5 posterior aspect upper forth of Lt. forearm
5. Abrasion 6 x 4 cm partero lat. aspect of lower forth of lt. arm
6. Abrasion 4 x 4 cm posterior aspect of mid of lt. arm
7. Bruise 7 x 3 Lt. shoulder
8. Abrasion 1 x ½ cm Lt. medial mallcalus
9. C/o pain back no visible injury.

11. Having carefully weighed the prosecution evidence we find that injuries received by appellant Ghasi Lal were not explained by the witnesses.

It appears that there was a melee at the time of incident and the complainant party and accused party were indulged in a free fight.

12. In Kambi Nanji v. State of Gujarat (AIR 1970 SC 219) their Lordships of the Supreme Court indicated that where there was a melee at the time of incident and the two groups indulged in a free fight resulting in injuries to persons of both groups and death of two, if the court comes to the conclusion that the injuries sustained by the persons were in the course of a free fight then there is no question of common object and only those persons who are proved to have caused injuries or death can be held guilty for the offence individually committed by them.

13. In Munir Khan Vs. State of UP (AIR 1971 SC 335) it was indicated that in a mutual fight there is no common object and none of the accused can be convicted by having recourse to section 149 IPC.

14. The prosecution thus could not establish that the appellants were the members of unlawful assembly and their common object was to kill Roop Lal. The evidence against appellant Ram Singh is however consistent and it is proved beyond reasonable doubt that he opened fire at Roop Lal and caused injuries on his chest and abdomen as a result of which he died. Charge under section 302 IPC is established against appellant Ram Singh. Other appellants viz. Ghasi Lal, Ram Shyam and Ram Swaroop are found guilty under section 323 IPC for their individual act.

15. For these reasons, we dispose of instant appeal in the following terms:-

(i) We dismiss the appeal of appellant Ram Singh, but instead of

Section 302/149 IPC, we convict him under section 302 IPC and sentence him to suffer imprisonment for life and fine of Rs.1000/- in default to further suffer six months rigorous imprisonment. We however acquit the appellant of the charges under sections 148, 323/149 and 324/149 IPC.

(ii) We partly allow the appeal of appellants Ghasi Lal, Ram Shyam and Ram Swaroop and while acquitting them of the charges under sections 302/149, 148 and 324/149 IPC, we instead of Section 323/149 convict each of them under section 323 IPC. Since each of the appellants have already undergone confinement for a period of more than six months and they are on bail, they need not surrender and their bail bonds stand discharged.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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